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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,135	06/05/2001	David Seneor	3848-010270	3534

7590

07/01/2003

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1772

13

DATE MAILED: 07/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

ASB

Office Action Summary	Application No. 09/763,135	Applicant(s) SENEOR, DAVID	
	Examiner Christopher P Bruenjes	Art Unit 1772	

-- Th MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REJECTIONS REPEATED

1. The 35 U.S.C. 102 rejections of claims 1,3-4, and 7-10 as anticipated by Sharp are repeated for the reasons previously of record in Paper #10, Page 3 Paragraph 4.
2. The 35 U.S.C. 103 rejections of claims 2 and 6 over Sharp in view of Bartelloni are repeated for the reasons previously of record in Paper #10, Pages 4-5 Paragraph 5.
3. The 35 U.S.C. 103 rejection of claim 5 over Sharp in view of Mitchell is repeated for the reasons previously of record in Paper #10, Pages 5-6 Paragraph 6.

ANSWERS TO APPLICANT'S ARGUMENTS

4. Applicant's arguments filed in Paper #12 regarding the 35 U.S.C. 102 rejections of claims 1, 3-4 and 7-10 of record have been fully considered but they are not persuasive.

In response to Applicant's argument that the reference shows other layers or fiber-reinforcing material in the outer tank, it is noted that the claims are written in open language and therefore the claim limitation suggests that the outer layer

Art Unit: 1772

is made from at least polyurethane, other materials can be present in the outer layer and still read on the claim.

In response to Applicant's argument that the reference discusses a layer having a total thickness of roughly 4 cm and that the present invention requires polyurethane in a range between 2.5 and 3.5 mm, the claims only recite that the polyurethane-based coating layer have a thickness greater than 2.5 mm, which 4 cm is. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument that the reference does not teach a resinous material alone having a desired thickness, the claims do not limit the outer wall to a resinous material alone, it states that the outer wall is covered by a polyurethane-based coating layer, or is formed from polyurethane, which does not preclude adding the continuous wall of polyurethane to filament bundles.

In response to Applicant's argument that Sharp does not teach a inner, main reservoir and including a coating layer, where the coating layer is formed by an inner layer made from a paper material and outer layer made from polyurethane, Claim 1 and 4 refer to open language, in which the addition of layers

Art Unit: 1772

between the layers mentioned is included in the scope of the claim. Therefore, the scope of the claim includes any number of layers, as long as the order of layers includes an inner layer of steel, an intermediate layer of paper, and an outer layer of polyurethane. Within the scope of the claim the steel layer is not necessarily the innermost layer and the polyurethane layer is not necessarily the outermost layer, and none of the three layers are required to be in contact with each other.

Furthermore, the outer wall is a continuous wall made from polyurethane, paper, and filament arrays. The limitation requires that the outer wall be made from polyurethane as an outer layer and paper as an inner layer, the limitation does not require that the wall is made from only paper and polyurethane nor does it require that the paper layer or the polyurethane layer individually is continuous. Although sections of the outer wall that include the filament arrays are taught to have a thickness between 4 and 12cm, the sections of the outer wall that include only the paper and polyurethane layers are taught to be within the range of 2.5 to 3.5 mm. Therefore, the Sharp reference reads within the scope of claims 1 and 4.

5. Applicant's arguments filed in Paper #12 regarding the 35 U.S.C. 103 rejections of claims 2 and 6 over Sharp in view of

Art Unit: 1772

Bartelloni have been fully considered but they are not persuasive.

In response to Applicant's argument that Bartelloni does not cure the deficiencies of the Sharp patent with regards to claims 1 and 4, the arguments about claims 1 and 4 are discussed above.

In response to Applicant's argument that Bartelloni represents non-analogous art and that there is no suggestion to combine teachings, it has been held that the determination that a reference is from a nonanalogous art is two fold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with when the inventor was involved. *In re Wood*, 202 USPQ 171, 174. In this case, Bartelloni is within the field of construction, which is a general field that includes tank construction, and one of ordinary skill in the art would have recognized that the reference is reasonably pertinent to the particular problem of selecting a suitable paper for construction, when the paper must be impermeable, flexible, and resistant. Further, one of ordinary skill in the art would have recognized that latex-based paper taught by Bartelloni would be the most suitable paper for construction of underground reservoirs, because any materials

Art Unit: 1772

used in an underground reservoir must be impermeable and resistant to water and other liquids and a flexible paper is needed in order to shape the paper to the steel tank.

6. Applicant's arguments filed in Paper #12 regarding the 35 U.S.C. 103 rejection of claim 5 over Sharp in view of Mitchell have been fully considered but they are not persuasive.

In response to Applicant's argument that Bartelloni does not cure the deficiencies of the Sharp patent with regards to claims 1 and 4, the arguments about claims 1 and 4 are discussed above.

In response to Applicant's argument that there is no motivation for combining Sharp and Mitchell, one of ordinary skill in the art would have recognized that a method would be selected for bonding the paper and polyurethane layers to the steel tank, and that the abrasive or "jet" blasting steel is a well known and suitable method for enhancing that bonding in the dual wall tank art, as taught by Mitchell.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Application/Control Number: 09/763,135

Page 8

Art Unit: 1772

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher P Bruenjes

Examiner

Art Unit 1772

CPB

June 13, 2003

Ch - B

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772
6/29/03